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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/618,853	07/18/2000	Thomas Lenz	76138-111	8635

61263 7590 01/17/2008

PROSKAUER ROSE LLP
1001 PENNSYLVANIA AVE, N.W.,
SUITE 400 SOUTH
WASHINGTON, DC 20004

EXAMINER	
TO, TUAN C	
ART UNIT	PAPER NUMBER
3663	

MAIL DATE	DELIVERY MODE
01/17/2008	PAPER

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The time period for reply, if any, is set in the attached communication.

RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS LENZ, JURG MOLLENHOFF
and OTOMAR STRUWE

Appeal 2006-3298
Application 09/618,853
Technology Center 3600

Oral Hearing Held: November 15, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, JENNIFER D. BAHR, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

DAVID J. BALTAZAR, ESQUIRE
Proskauer Rose, LLP
1001 Pennsylvania Avenue, NW
Suite 400 South
Washington DC 20004

The above-entitled matter came on for hearing on Thursday, November 15, 2007, commencing at 9:15 am, at The U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Deborah Rinaldo, Notary Public.

PROCEEDINGS

MR. BALTAZAR: Good morning, Your Honors. My name is David Baltazar. I'm from the law firm of Proskauer Rose here on appeal from final rejection for application serial number 09/618,853.

At issue is whether claims 1 through 9 of the instant application are anticipated under 35 USC 102(a) by U.S. patent number 5,884,719 to Schramm, et al., which I'll refer to hereafter as the Schramm patent.

Of the nine claims at issue, claim 1 is the only independent with claims 2 and 9 depending directly or indirectly from claim 1.

It is submitted as it has been argued in the responses to the office actions and within the appeal brief and reply brief, the Schramm patent fails to show or describe each and every feature of the claimed invention.

The invention is generally directed to systems and methods for adjusting the normal slip drive value in the rear wheels of a vehicle -- rear driven wheels of a vehicle, excuse me.

Claim 1 recites, In a vehicle equipped with an ASR system and operating in a rear drive vehicle mode, a method for adjusting the normal drive slip value of the ASR system comprising, (a), evaluating dynamic values associated with the front wheels of the vehicle, and (b), if the dynamic values associated with the front wheels exceed a threshold value increasing the normal drive slip value of the rear wheels.

The appeal and reply briefs detail the differences between the claimed invention and the Schramm patent and further details how the Schramm patent fails to show or describe or teach all of the claimed limitations.

However, in the time I'm provided, I would like to focus on the

examiner's specific assertions in support of the rejection and his reliance on the particular text from the Schramm patent to sustain the rejection.

A review of this text and the lines that follow illustrate how the Schramm patent fails to show or describe the claimed method and in particular fails to show or describe a method for adjusting the normal slip drive value of the ASR system which increasing the normal drive slip value of the rear wheels if the dynamic values associated with the front wheels exceed a threshold value.

According to the examiner at page 4 and 5 of the examiner's answer, columns 3, lines 28 through 36 of the Schramm patent purportedly supports his conclusion that one of ordinary skill in the art would understand the passage to describe or suggest a system and method as claimed.

Column 3, lines 28 through 36 of the Schramm patent reads as follows, quote, In the preferred exemplary embodiment the speeds of the nondriven wheels are sent to reference value former 28 which calculates a reference velocity V.sub.FZG for the drive slip control by averaging the two-wheeled speed signal values.

In comparators 32 through 36, the speeds of the drive wheels are compared with the reference velocity which has been found to determine the actual drive slip at the drive wheels of the vehicle.

Contrary to the examiner's conclusory assertion, nowhere in this passage is a method expressly or inherently described where if the dynamic values associated with the front wheels exceed a threshold value increasing the normal drive slip value of the rear wheels.

To the extent the examiner is relying on inherency, it is submitted that the examiner has not provided the requisite basis in fact, technical reasoning

or evidence to support the determination of the claim features flow from the Schramm patent.

It is submitted that the passage cited by the examiner instead describes two steps, one calculating reference velocity from the nondriven or front wheels, and two, comparing the speeds of the drive or rear wheels to the reference velocity to determine the actual drive slip of the rear wheels.

Nowhere is it shown or described in the cited passage or elsewhere in the Schramm patent in which the dynamic values of the front wheels are evaluated and if the values exceed a threshold value increasing the normal slip value of the rear wheels.

With regard to adjusting the slip drive value in the Schramm patent, I would point Your Honors to the lines following the passage cited by the examiner in which it states columns 3, lines 32 through 52, quote, The desired drive slip is determined in desired value former 62.

In addition to other variables affecting the drive slip, desired value former 62 determines the desired slip of the drive slip control on the basis of the input variables starting from a predetermined fixed value. The desired slip thus determined is transmitted to comparators 40 and 48.

According to the invention, this desired slip is adjusted in accordance with the position of the gas pedal, the engine's RPM or the driver's command derived from position of the gas pedal and the engine's RPM.

In comparators 40, 48 the desired value is compared with the current actual value and an output signal is generated when the actual value exceeds the desired value by an excessive amount, that is by a certain tolerance value.

Drive slip control at 44 receives a signal and forms an output signal

for reducing the engine torque in accordance with the predetermined control strategy such as PID so that the actual slip approaches the desired slip.

Thus, the Schramm patent describes adjusting the desired slip value as a function of the position of the gas pedal and the engine's RPM. Again, nowhere is it shown or described that the normal drive slip value of the rear wheels is adjusted as a function of the front wheels.

Because it has not been established that the Schramm patent shows, describes, teaches or suggests each and every feature of the claimed invention, the rejection of the claims cannot stand.

Now, in claims 2 and 5 which depend from independent claim 1 are patentable for the reasons I've just provided. However, it's believed that claims 2 and 5 are believed to be separately patentable for other reasons in view of the examiner's rejections.

These reasons are presented in the appeal and reply brief and are well detailed. However, there are specific points to be noted with respect to claim 2. Claim 2 recites, quote, Wherein the dynamic values of claim 1 comprised acceleration values for each of the front wheels.

The examiner, in an attempt to reach the claimed invention, asserts that the method of Schramm which captures wheel speed of nondriven wheels also purportedly inherently shows or describes the method of claim 12.

I point Your Honors to the examiner's answer on page 5. In support, the examiner cites to the Microsoft Bookshelf basic dictionary to define acceleration as a rate change of velocity.

However, again, it is submitted that the examiner has not offered the requisite rationale or evidence as to why the method of claim 2 necessarily

flows from the description in the Schramm patent, as the Schramm patent expressly provides for capturing wheel velocity.

With regard to claim 5, it was noted in a footnote in the reply brief at page 4 that the examiner did not respond to arguments presented. It should again be reiterated here that the Schramm patent does not show or describe the methods in claim 5 which includes determining if the vehicle is traveling on a curve.

For the reasons presented, claims 1 through 9 are patentable over the Schramm patent, as we respectfully requested that the rejections be withdrawn. Thank you.

JUDGE OWENS: Would you say that the difference between the speed of the drive wheels and the reference speed is a dynamic value?

MR. BALTAZAR: I'm sorry, I couldn't hear the last part. The difference between the speed of the --

JUDGE OWENS: The speeds of the drive wheels and the reference velocity of the front wheel based on the front wheels is a dynamic value.

MR. BALTAZAR: Well, it's not the dynamic value of the front wheels. It is a calculated value.

Again, it's a comparison between the -- if there is a value determining the reference velocity from the front wheel, again, in Schramm where the calculation of the -- at the front wheels to determine a reference velocity and comparing them to the dynamic values at the -- excuse me, comparing to the velocity of the rear wheels.

JUDGE OWENS: Is that a dynamic value?

MR. BALTAZAR: As a dynamic value?

JUDGE OWENS: Is that a dynamic value?

MR. BALTAZAR: As a calculated value, I don't believe that it would be necessarily a dynamic value. It sounds like a calculated value. Again, I would --

JUDGE OWENS: Is the reference value a dynamic value? The wheel speed of the nondriven wheels.

MR. BALTAZAR: The reference value, a dynamic value calculated from the front wheels in the Schramm patent?

JUDGE OWENS: Yes, is that a dynamic value?

MR. BALTAZAR: Again, I think that's more of a calculated -- that sounds like it's a calculated value. I would point to a reference that was identified in the reply brief as to an example of what would be understood to be a dynamic value, one being acceleration, deceleration of wheels or wheel velocity.

JUDGE OWENS: Well, then why wouldn't the speed of each front wheel be a dynamic value?

MR. BALTAZAR: I believe that that is the case. I think it was stated in the reply brief that -- where it says at page 5 of the reply brief, Persons skilled in the art of antiskid controls would use the term dynamic values to refer frequently changing values of wheel acceleration/deceleration or wheel velocities.

JUDGE OWENS: So we have step A, evaluating dynamic values associated with the front wheels. That would be the velocity of each front wheel.

MR. BALTAZAR: If you are just talking about the wheel velocity of the front wheel.

JUDGE OWENS: Yes, each front wheel, that would be a dynamic

value.

MR. BALTAZAR: I believe that is a dynamic value.

JUDGE OWENS: So we have step A in claim 1.

MR. BALTAZAR: I believe so. Certainly evaluating wheels -- evaluating wheel speed, wheel velocity.

JUDGE OWENS: Thank you.

MR. BALTAZAR: Thank you very much.

(Whereupon, the proceedings at 9:27 a.m. were concluded.)